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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,225	08/22/2003	James G. Kean	2538-1-001CON	1393
23565	7590	09/22/2004	EXAMINER	
KLAUBER & JACKSON 411 HACKENSACK AVENUE HACKENSACK, NJ 07601			NGUYEN, VINCENT Q	
			ART UNIT	PAPER NUMBER
			2858	

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/646,225

Applicant(s)

KEAN ET AL.

Examiner

Vincent Q Nguyen

Art Unit

2858

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Pre-Amend filed 2/6/2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/22/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 14-21 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 13-20 of prior U.S. Patent No. 6,611,133. This is a double patenting rejection.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225

USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-13, 22, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,611,133 (Hereinafter refers to as PN.133). Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Regarding claims 1, the only difference between claims 1 (Claim 1 of the PN. 133 and claim 1 of the application) is that claim 1 of the application recites (Lines 15-17): "wherein said threshold pressure which triggers said actuator is reached when the predetermined amount of exposure of the core wire is selected from at least the radius of the anode, and at least 50% of the thinnest cross section of the anode" in place of "at least 6 inches at either end" (Of the anode).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to recognize that the predetermined amount of exposure of the core wire of radius of the anode and at least 50% of the thinnest cross section of the anode is substantially 6 inches. Even the radius of the anode is not 6 inches, selecting an optimum value (the threshold value) to actuate indicator would have been obvious to one having ordinary skill in the art at the time the invention was made since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955) (MPEP 2144.05).

Regarding claims 2-11, 13, the claims are identical to that of claims 2-11, 13, of PN. 133.

Regarding claim 12, except for the difference discussed in claim 1, the claim is identical to claim 1 of PN. 133.

Regarding claim 22, although the claim is not identical to claims 1-20, it would have been obvious to one of ordinary skill in the art to recognize that the limitations recited in the claim are in claims 13-20 of PN. 133.

Objection

5. Claim 1, at end of line 6, should a semicolon be inserted?

Appropriate correction and/or explanation is required.

For the purpose of examination, examiner assumes that a semicolon was omitted.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 14-19, 21, 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Hossle (4,051,007).

Regarding claims 14, 22, Hossle discloses a device comprising a core wire (62) arranged within an anode rod (72); said core wire (62) having at least one fluted portion of a predetermined longitudinal length; an actuator (78b) in communication with at least the fluted core portion; and indicator means (Red color on the plunger) (Column 10, lines 60-63) for indicating that said anode rod is depleted, said indicator means being connected to said actuator (78b); wherein when said anode rod (72) is depleted to an extent sufficient to expose a predetermined amount of the fluted core portion of said core wire (62) so that a fluid which surrounds said anode rod (72) flows in the fluted portion and pressurizes until reaching a threshold which triggers said actuator (78b), and said indicator means is displaced by said actuator to a position to indicate that said anode rod is depleted.

Regarding claim 15, Hossle discloses said actuator (78b) comprises a piston (Plunger).

Regarding claim 16, Hossle discloses said actuator (78b) comprises a pressure gauge (Column 3, lines 57-68).

Regarding claim 17, Hossle discloses said actuator comprises a switch (32).

Regarding claim 18, Hossle discloses said indicator means includes at least one of an indicator light and an audible indicator (40) to indicate that said anode rod is depleted (Column 4, lines 12-24).

Regarding claim 19, Hossle discloses said indicator means includes means for remote indication that said anode rod is depleted (Column 7, lines 9-12).

Regarding claim 21, Hossle discloses said indicator means further comprises a switch (32, 24, 38a, 38b), and said actuator actuates said switch to cut off at least one of a fluid supply and a fuel supply.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-13, 20, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hossle (4,051,007).

Regarding claims 1, 12, 20, Hossle discloses a device comprising (figure 5) a core wire (62) arranged within an anode rod (72); said core wire (62) having at least one longitudinal passageway (6d) (figure 2) and at least one substantially lateral passageway (68) communicating with said longitudinal passageway (6d), actuator means (78b) in communication with an end of said longitudinal passageway (6d);

indicator means (Red color on plunger) (Column 10, lines 60-63) for indicating that said anode rod is depleted, said indicator means being connected to said actuator means (78b); wherein when said anode rod (72) is depleted to an extent sufficient to expose a predetermined amount of said core wire so that a fluid surrounding said anode rod flows into said lateral passageway and said longitudinal passageway and pressurizes until reaching a threshold which triggers said actuator (78b), and said indicator means is displaced by said actuator means to a position which indicates that said anode rod is depleted (column 10, lines 60-68) and wherein said threshold pressure which triggers said actuator is reached when the predetermined amount of exposure of the core wire.

Hossle does not disclose the threshold is selected from at least the radius of the anode and at least 50% of the thinnest cross section of the anode or reaches 6 inches.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the threshold is selected from at least the radius of the anode and at least 50% of the thinnest cross section of the anode because Hossle taught that the threshold can be set to burst when it has 3 or more years to run is depending to each application (Column 5, lines 26-59).

Regarding claims 2, 3, Hossle discloses said actuator means comprises a pressure gauge (Column 5, lines 35-40).

Regarding claims 4-6, Hossle discloses said actuator means comprises a switch (Column 7, lines 1-17).

Regarding claim 6, Hossle discloses said indicator means includes an audible indication (40).

Regarding claim 7, Hossle discloses said indicator means includes means for remote indication that said anode rod is depleted (Column 7, lines 9-12).

Regarding claim 8, Hossle discloses at least a second substantially lateral passageway communicating with said longitudinal passageway (68) (Figures 2 and 5).

Regarding claim 9, Hossle discloses said longitudinal passageway (6d) is positioned in the center of said core wire (figure 2).

Regarding claim 10, Hossle discloses said longitudinal passageway (68) is offset from a center of said core wire (Figures 2 and 5).

Regarding claim 11, Hossle discloses a switch (32, 34, 38a, 38b), and wherein said actuator means actuates said switch to cut off at least one of a fluid supply and a fuel supply (Column 9, lines 39-56).

Regarding claim 13, Hossle does not disclose said substantially lateral passageway (68) is arranged at one of an acute and obtuse angle relative to said longitudinal Passageway.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the lateral passageway (68), as taught by Hossle, have it arranged at one of an acute and obtuse angle relative to said longitudinal passageway into the system of Hossle because except for how much pressure is need to drive the plunger, having lateral passageway arranged at one of an acute and obtuse angle relative to said longitudinal Passageway does not change the function of the system.

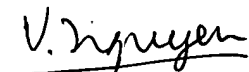
Contact Information

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vincent Q Nguyen whose telephone number is (571) 272-2234. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, N. Le can be reached on (571) 272-2233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vincent Q Nguyen
Patent Examiner
Art Unit 2858



September 17, 2004